

FILED & ENTERED

JUL 05 2017

CLERK U.S. BANKRUPTCY COURT
Central District of California
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NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

MARIA VIRGINIA MARTI,

Debtor.

Case No. 2:16-bk-17064-RK

Chapter 7

Adv. No. 2:16-ap-01270-RK

**ORDER (1) DENYING MOTION FOR
SUMMARY JUDGMENT, (2) VACATING
PRETRIAL CONFERENCE SCHEDULED
FOR SEPTEMBER 26, 2017, AND (3)
SETTING STATUS CONFERENCE
HEARING**

MARIO ROMERO,

Plaintiff,

vs.

MARIA VIRGINIA MARTI and ARMEX
DESIGN & CONSTRUCTION, INC.,

Defendants.

Date: July 11, 2017

Time: 3:00 p.m.

Courtroom: 1675

Pending in this adversary proceeding before this court is the Motion of Plaintiff
Mario Romero ("Plaintiff") for Summary Judgment ("Motion") (Docket No. 127) filed on

1 May 29, 2017, which Plaintiff noticed for hearing before the court on July 11, 2017 at
2 3:00 p.m. In support of his motion, Plaintiff filed over 5,000 pages of exhibits to support
3 his motion. Defendant Maria Virginia Marti ("Defendant") filed an Opposition to the
4 Motion ("Opposition") (Docket No. 148) on June 20, 2017. Plaintiff filed a reply brief
5 (Docket No. 152) on June 26, 2017. Dimitros P. Biller, of the law office of LDT
6 Consulting, Inc., represents Plaintiff, and Derek L. Tabone, of the Law Offices of
7 Tabone, APC, represents Defendant.

8 The court determines that oral argument is not necessary and dispenses with it,
9 vacates the hearing on July 11, 2017, takes the Motion under submission and rules as
10 follows.

11 Having considered the moving and opposing papers and related pleadings, the
12 court denies the Motion for the reasons stated in the Opposition and based on the
13 following reasons. Plaintiff has not shown that there are no triable issues of material
14 fact and that he is entitled to judgment as a matter of law pursuant to Federal Rule of
15 Bankruptcy Procedure 7056 and Federal Rule of Civil Procedure 56. As Defendant
16 argues in the Opposition, Plaintiff failed to identify the elements of each claim and point
17 to admissible and uncontroverted evidence establishing each claim. In his moving
18 papers, Plaintiff asserted "20 separate issues" which he claims "are sufficient to dismiss
19 the Petition because the issues are so significant," but Plaintiff failed to identify the facts
20 and elements of each of his claims under 11 U.S.C. §§ 727 and 523. Plaintiff filed
21 approximately 5,000 pages in support of his motion, but only gave vague references to
22 "Sec. 'A'" and "UMF", often citing a multitude of "UMFs" without specifically showing
23 how each "UMF" or fact support an element of his claims, which is not meeting his
24 burden here to prevail on summary judgment. It appears that Plaintiff was attempting to
25 refer to multiple proposed uncontroverted material facts and various exhibits to support
26 multiple facts simultaneously. To the extent that Plaintiff relies on the judgment in his
27 favor from the state court jury verdict to establish liability for the debt, res judicata is not
28 appropriate because there is a pending appeal as the decision in the former proceeding

1 must be final and on the merits. California Code of Civil Procedure, § 1235.120;
2 *Southern Public Utility District v. Silva*, 47 Cal.2d 163, 165 (1956) (citing predecessor
3 statute to California Civil Code § 1235.120).

4 In reviewing the voluminous pleadings and papers filed on the Motion, it appears
5 to the court that since the appeal of the state court action is not concluded and the court
6 has granted relief from the automatic stay to allow the appellate proceedings to go
7 forward, the court should consider permissive abstention to allow the state court
8 appellate proceedings to conclude because the determination of liability is intertwined
9 with the issues of debt dischargeability under 11 U.S.C. § 523, *In re Tucson Estates,*
10 *Inc.*, 912 F.2d 1162, 1166-1167 (9th Cir. 1990)(citation omitted), but the court may
11 proceed with the litigation of the 11 U.S.C. § 727 claims only because those claims
12 relate to conduct in the bankruptcy case and not the conduct at issue in the state court
13 action. To discuss this with the parties, the court will vacate the pretrial conference and
14 set a status conference instead.

15 IT IS FURTHER ORDERED that the Pretrial conference scheduled for
16 September 26, 2017 at 2:00 p.m. is hereby vacated.

17 IT IS ADDITIONALLY ORDERED that a status conference is scheduled for
18 August 15, 2017 at 1:30 p.m. to discuss a stay pending the resolution of the appeal in
19 the state court litigation between the parties.

20 IT IS SO ORDERED. ###

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24 Date: July 5, 2017



Robert Kwan
United States Bankruptcy Judge